

TENNESSEE STATE BOARD OF EQUALIZATION

In the matter of:

HAMILTON COMMUNITY CHURCH	)	
Dist. 2, Map 149K, Group C, Parcel 32	)	Hamilton
Claim of exemption	)	County

ORDER ON CERTIFIED QUESTION AND FOR REMAND

Statement of the case

This matter is pending before the Board on certification of a dispositive legal issue from the Assessment Appeals Commission. The Board is presented with a recurring question that arises when one exempt entity leases its property to another, or shares its property with another exempt entity while collecting or imposing a charge for rent or sharing of expenses. The exemption statute disqualifies property in this situation if the amounts paid exceed a "reasonable service and maintenance fee." The Board heard oral argument in Nashville on June 27, 2005 and considered additional legal arguments of Hamilton Community Church ("Hamilton") at a second hearing on March 30, 2007 before members Darnell (presiding), Bailey, Button, Elkins, Farr, Morgan and Sims. Hamilton was represented by its attorney Steve Duggins.

Findings of fact and conclusions of law

Hamilton is the owner of a large, contemporary worship facility on 18 acres on Shallowford Road in Chattanooga. Vineyard Christian Fellowship ("Vineyard") shares use with an informal arrangement for sharing of expenses. An exhibit presented when the case was heard lists expenses and reimbursements for the period 2001-2003 (Exhibit A). Hamilton Church contended:

- 1) the shared use/shared expenses issue was irrelevant because the rent proviso only applied if the owner did not also use the property for its own exempt purposes;
- 2) the reimbursements were purely voluntary and should not be considered rent; or
- 3) the reimbursements were no more than reasonable expenses related to Vineyard's use of the property, and therefore did not violate the rent proviso.



The Commission rejected the first argument because numerous precedents had indeed applied the rent proviso to use/expense sharing arrangements. The Commission deadlocked on whether the expense sharing arrangement violated the rent proviso under the circumstances of the case, and this is the issue before the Board.

The administrative judge found the parties intended the reimbursement ultimately to include not just expenses related to Vineyard's use, but also fixed expenses (incurred whether or not Vineyard used the property), as well as depreciation and debt service on construction loans. In the judge's view, the only expenses that could be shared consistent with the rent proviso, were those "directly attributable to the actual usage of [the] property by another exempt institution (e.g., utilities, repairs, cleanup)." Respectfully, the Board finds no evidentiary support for the finding that the parties' agreement or the actual payments transgress §67-5-212. A review of the shared expenses lists janitorial supplies and staff, utilities, garbage, maintenance and repairs, carpet cleaning and repair, equipment usage, and property taxes. Testimony established these expenses were not unreasonable and were directly related to Vineyard's usage. The statements by the pastors that Vineyard ultimately hoped to help pay for the building were clearly aspirational and not reflective of any actual agreement between the parties for what might be characterized as rent.

Mr. Duggins stated to the Board that a specific agreement had been concluded since the prior hearings and a copy of this will be submitted for the file and further review by Board staff.

An unrelated issue in the case was whether three of the eighteen acres were in use at all. Conceding these portions were overgrown and sparingly used at the time, Hamilton Church nonetheless contended the three acres should be exempt under the "constructive use" concept referred to in the St. Jude/Fed Ex golf tournament case, *Appeal of Youth Programs*. This issue was not certified to the Board nor was it ruled upon otherwise by the Assessment Appeals Commission.

#### ORDER

It is therefore ORDERED, that the decision of the administrative judge is reversed and exemption is granted as to the fifteen acres and structures found to

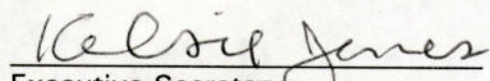


be used for religious purposes. The appeal is remanded on the issue of the remaining three acres determined to be unused.

DATED: June 21, 2007

  
Presiding member

ATTEST:

  
Executive Secretary

cc: Mr. Steve Duggins, Esq.  
Mr. Bill Bennett, Assessor